

## V. REMARKS/ARGUMENTS

- STATUS OF THE CLAIMS

Claim 1-44 are pending in this application. Claims 1-24 have been canceled. Claims 25-44 stand rejected. Claim 25, 29, 30, 31, 32, 33, 35, 36, 40, 43, 44 have been amended.

- 35 U.S.C. 112 REJECTION 1<sup>ST</sup>

- Examiner's Stance

Claim 44 has been rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement, namely asserting that the limitations constitute new matter and requesting direction to the original disclosure for the location of the claimed subject matter.

- Applicant's Response

The assertion is in error. The examiner is directed at least to paragraphs [0001, 0006, 0011, 0016, 0021, and 0022] for support to claim 44. An “electronic communication network” having “executions...sent back electronically” and “introducing an intercept in the electronic data connection” provides means where the “intercept records the orders and executions,” “sends the information to an EQCM.” Because the “EQCM...has access to market data via an electronic link,” the “EQCM calculates the execution quality in real time and displays the results to the trader” via “a screen through which the system displays real time (or near real time) execution quality.” The “transaction involves an electronic order,” “typically using FIX from the trader to the executing broker,” whereby “order information from trader to broker and the execution information from the executing venue to trader are ordinarily accomplished electronically over a suitable communications link in machine-readable form.” By “means of computer assisted displays” the “computer system presents a trader with means to view the execution quality.”

One of ordinary skill in the art would recognize that implementation of a securities

trading implementation in an electronic communications network would comprise a computer wherein the computer would make use of instructions. Thus, the Applicant believes they have reasonably conveyed the invention to one skilled in the art and has given possession of the claimed limitations, contrary to the allegation. Applicant respectfully requests the rejection be withdrawn.

- 35 U.S.C. 112 REJECTIONS 2<sup>ND</sup> PARAGRAPH

- Examiner's Stance

Claim 33, 36-43 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.

- Applicant's Response

Amended claims 33, 36-43 obviate the rejections.

- 35 U.S.C. 101 REJECTIONS

- Examiner's Stance

Claims 25-35 have been rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.

Claims 36-43 have been rejected as there does not appear to be any computer related hardware or devices or specific structure in the body of the claim. Examiner interprets "a module ..." to be software. Software alone in an apparatus claim prevents the claim from falling into one of the statutory categories of invention (see MPEP 2106.01).

- Applicant's Response

Amended claims 25-35, as submitted herein, overcome this rejection. For example, claim 25 recites a method, implemented by a computer system, for providing a real-time or near real-time assessment of market trade transactions in an electronic communication network.

Amended claims 36-43 presently conform to MPEP requirements and recent Supreme Court decisions; however, the Applicant disagrees that the message interceptor and/or execution quality calculation module are strictly software. Nevertheless, the MPEP does not exclude computer programs from meeting the statutory requirements. The MPEP states: “computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim, (see: MPEP 2160.01(I)).

- 35 U.S.C. 103(A) REJECTIONS

- Examiner's Stance

Claims 25-30, 32-40, and 42-44 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quality of Execution, LLC (PTO-892, Ref. V).

Claims 31, and 41 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Quality of Execution, LLC in view of Parker et al. (U.S. Patent Application Publication 2004/0059628).

- Applicant's Response

Rejections to claims 25-30, 32-40, and 42-44 are obviated by the amendments made herein. The Applicant further asserts that the references, taken by themselves or in combination, do not provide sufficient grounds for establishment of a *prima facie* case of obviousness. Analysis of the claims is based on MPEP guidelines which are stated in the MPEP Paragraph 2143 as follows:

“To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

Claim 25 (as well as claims 36 and 44, which recite similar limitations) is not disclosed or suggested by the reference to Quality of Execution (“QOE”), contrary to that alleged in the Office Action (see: page 6). The amended claim requires the limitations of receiving, by a computer system operatively connected to the electronic communication network between a trader and a broker, an order identity of interest and selecting and intercepting, by said computer system, from a communication between said broker and said trader one or more order executions, or portions thereof, matching at least one of said stored identity and conveying in real-time or near real-time information regarding said one or more execution qualities to said trader. These limitations are not disclosed or suggested by QOE.

Identification of any one order and related executions for reporting to the quality of execution to the trader is not contemplated, nor does the QOE process operate separately from the trader or broker. QOE’s Trade Sentry operates at and for the broker, reporting to the broker “on a daily, monthly, quarterly and yearly basis” all the orders of the broker. No immediate reporting of quality information is reported to the trader. The Trade Sentry product acts as the internal “compliance consultant”, “polic[ing]” a broker’s firm, by “assisting” from the brokers side. The computer system of the presently amended claim does not reside at the trader or broker but between them [Item 1, pg. 3, 4].

The reference Item 4, “Time and Sales Viewer”, implementation is different from that alleged. The reference states that the viewer “puts vital time and sales information in front of anyone with a web browser,” however anyone is not inclusive of the trader since the trader is not on the broker side. Furthermore, the exception reports of QOE provide brokers performance data satisfying their SEC requirements. and are not reported to a trader, nor in real or near real-time.

Trade Sentry is also silent on the use of an interceptor and/or execution quality calculation module that stores an order information to compare at the interceptor to further intercept and select order executions. Furthermore, QOE teaches that Trade Sentry enforces monitoring of every order (see: Item 1). This, contrary to the allegation in the Office Action, teaches away from selective interception of orders and executions as presently required in the limitations of the claim.

The novelty and non-obviousness of dependent claims 26-35, and 37-43 is provided at least by the novelty and non-obviousness of independent claims 25 and 36, from which the claims depend.

Nevertheless, with regard to amended claim 26 (and with similar rationale, claim 37), it would non-obvious to one of ordinary skill in the art to not interfere with an execution message from a broker to a trader as alleged. Intercepting execution information destined for a trader, which occurs after the trade execution, or a portion thereof, would have no bearing on the timing of the execution itself, and therefore would not be obvious in light of the Trade Sentry product. Furthermore, QOE does not disclose or suggest it has any bearing on communications between the broker and trader, nor any access to intercepted market orders nor to selected and intercepted order executions communicated between the trader and the broker.

Amended Claim 27 (and with similar rationale, claim 38) is not recited by Item 8 of the QOE reference. The allegation is inaccurate because a predetermined limit is not disclosed. The “NBBO Improv. Per share...” with corresponding order sizes does not, contrary to the assertion, disclose or suggest a predetermined limit.

Claim 28 (and with similar rationale, claim 39) is not recited by the reference to Item 4 of QOE since it does not teach or suggest information related to execution qualities provided to said trader via a display. Contrary to the allegation, QOE makes information available to parties on the broker side.

In reference to amended claim 29 (and with similar rationale, claim 40), the reference to QOE is absent suggesting the intercepting of orders and/or executions between a trader, as previously described above. Therefore, contrary to the assertion, there is no assessing of such orders as recited in the claim.

With respect to claim 30, the QOE reference discloses a listing of an order, but lacks providing information comprising a comparison, as asserted. The summary report depicts tables of values related to orders. No comparison is provided.

Claim 32 is not recited by Item 7 of QOE. QOE does not suggest or teach a comparison of said portion of executed market volume to a selected market order. QOE,

depicts the aggregate volume figures 4800x3000, 4800x3000, 1200x1100, 4800x4400, and 100x3300 and an execution quantity of 200, but without any comparison made, contrary to the assertion.

Claim 33 has been amended to more clearly recite the subject matter. QOE discloses a table “Market Order” that reports the timing of execution related to one or more shares. However the reference does not teach or suggest the blocking of execution communications between the trader and the broker, nor does it disclose aggregating the order executions related to each order. The table merely provides a tally of orders and executions with their relationships being absent.

Claim 34 (and with similar rationale, claim 42) is dependent from independent claim 25 and receives its novelty and non-obviousness at least from the novelty and non-obviousness of that independent claim.

With regard to amended claim 35 (and with similar rationale, claim 43), the reference to QOE discloses an Execution Report of “Unfinished Execution Evaluation” with 200 shares of JNPR traded at 7.12 per share. It does not suggest or teach an indication of what proportion of a particular market order of said one or more market orders has been executed and provided to said trader via a display.

Amended claim 31 (and with similar rationale, claim 41) recites limitations absent in the cited references. The present limitations require, at least, the comparison of performance of two or more selected brokers using one or more execution qualities for a selected market order. The reference to Parker does not disclose, teach or suggest that the grading should be related to a specific order that the trader selects, and thus any motivation to combine the references is also absent.

The cited references fail to disclose, separately or when combined, each and every element of the pending claims, and thus do not provide sufficient grounds for establishment of a *prima facie* case of obviousness, as required under MPEP Paragraph 2143. Therefore, the Applicant believes the claims to be in allowable condition and respectfully requests reconsideration that each of the rejections be withdrawn.

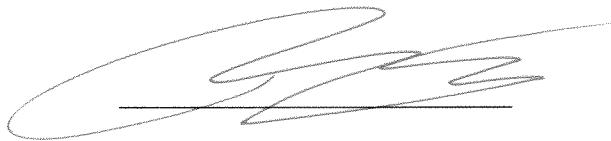
CONCLUSION TO REMARKS

Applicant asserts that this response is fully responsive to the Examiner's office action dated January 12, 2010.

Date: July 12, 2010

Respectfully Submitted,

KELLEY DRYE & WARREN LLP  
Attorneys and Agents for Applicants



John S. Winterle, Ph.D.  
Reg. No. 57,276

400 Atlantic Street, 13<sup>th</sup> Fl.  
Stamford, CT 06901-3229  
Direct Tel.: 203-351-8055  
Facsimile: 203-327-2669  
e-mail: jwinterle@kellydrye.com